

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS CARGILL WALLS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2020

No. 350667

Genesee Circuit Court

LC No. 11-028151-FC

Before: MARKEY, P.J., and METER and GADOLA, JJ.

PER CURIAM.

A jury convicted defendant, Thomas Cargill Walls, of one count of assault with intent to murder, MCL 750.83, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to 210 to 500 months' imprisonment for assault with intent to murder to be served consecutively to two years' imprisonment for felony-firearm.¹ This Court affirmed defendant's convictions and sentences after granting his motion to remand for a *Ginther*² hearing. *People v Walls*, unpublished per curiam opinion of the Court of Appeals, issued January 21, 2014 (Docket No. 307647), pp 3-4; *People v Walls*, unpublished order of the Court of Appeals, entered September 21, 2012 (Docket No. 307647).

Subsequently, defendant filed an application for leave to appeal to the Michigan Supreme Court on April 15, 2014, which at the time was held in abeyance pending the Court's decision in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015). *People v Walls*, 853 NW2d 337 (Mich, 2014). Upon deciding *Lockridge*, our Supreme Court reversed in part this Court's opinion affirming defendant's convictions and sentences in lieu of granting leave to appeal. *People v Walls*, 498 Mich 901 (2015). The Supreme Court reversed with respect to sentencing and

¹ Defendant received 459 days of jail time credit for the felony-firearm conviction.

² *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

remanded defendant's case to the trial court for possible resentencing in accordance with the *Crosby*³ remand procedure set forth in *Lockridge*, 498 Mich at 395-398. *Walls*, 498 Mich at 901.

On remand, the trial court denied resentencing in the following order dated November 4, 2016:

This case was remanded from the Michigan Supreme Court for this Court to determine whether it would have imposed a materially different sentence under the sentencing procedure described in *People v Lockridge*, 498 Mich 358 (2015). This Court has reviewed the file, the pleadings, and Defendant's pre-sentence investigation report. This Court would not have imposed a materially different sentence under the sentencing procedure described in *Lockridge*. This Court determines it would have imposed the same sentence absent the unconstitutional constraint on its decision, and reaffirms the original sentence imposed on November 28, 2011.

Per defendant's request, the trial court reissued this order on April 10, 2019.⁴

In the present appeal, defendant contends that pursuant to *Lockridge* the trial court failed to state an appropriate explanation for its decision not to resentence him. Because of this, defendant requests remand of this case to the trial court for further resentencing proceedings. We affirm.

An appellate court reviews a trial court's sentencing decision for an abuse of discretion. *People v Skinner*, 502 Mich 89, 131; 917 NW2d 292 (2018). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Waterstone*, 296 Mich App 121, 131-132; 818 NW2d 432 (2012). Also, "[w]hether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo." *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

In *Lockridge*, our Supreme Court outlined the procedure for a *Crosby* remand to the trial court. *Lockridge*, 498 Mich at 395-398. A trial court should provide a defendant the opportunity to promptly notify the judge that he or she will not seek resentencing. *Id.* at 398. If a defendant fails to notify the trial court, the court "should obtain the views of counsel, at least in writing, but need not require the presence of the [d]efendant, in reaching its decision (with or without a hearing) whether to resentence." *Id.* (citation and quotation marks omitted). "Upon making that decision, the trial court shall either place on the record a decision not to resentence, with an appropriate explanation, or vacate the sentence and, with the [d]efendant present, resentence in conformity with" *Lockridge*. *Id.* (citation and quotation marks omitted).

Here, the trial court complied with the *Crosby* procedure set forth in *Lockridge*. Specifically, upon issuance of the Supreme Court's Order dated October 28, 2015, the trial court

³ *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

⁴ See MCR 6.428.

afforded defendant the opportunity to avoid resentencing. Instead, defendant wrote a letter to the trial court clerk's office asking for an update on the Supreme Court's remand order and the status of his legal representation for resentencing. The trial court then received input from defendant's counsel in the form of a memorandum filed October 24, 2016, and the prosecution's response filed November 2, 2016. The trial court noted in its written order that it had reviewed the file, pleadings, and presentence investigation report and would not have imposed a materially different sentence under the *Lockridge* sentencing procedure. Ultimately, the trial court affirmed defendant's sentence without a hearing, explaining that "it would have imposed the same sentence absent the unconstitutional constraint on its decision[.]"⁵

However, defendant argues that the trial court provided no reasons in its order affirming his sentence. Defendant further argues that because of this the trial court order does not include an "appropriate explanation" required under *Lockridge*. This Court disagrees. As mentioned, the trial court explicitly stated in its order that it reviewed the file, pleadings, and defendant's presentence investigation report. Such documents include transcripts of defendant's jury trial and sentencing. In addition, defendant's counsel submitted a memorandum that argued why he was entitled to resentencing, and the prosecution filed a memorandum in response. The trial court stated in its order that it had reviewed these documents in the trial court record before reaching its decision on whether to resentence defendant. This Court finds that the reference to such a review in the trial court order provided the necessary basis for reaffirming defendant's original sentence.

Based upon the foregoing, the trial court provided an "appropriate explanation" for its decision not to resentence defendant. See *id.* Therefore, the trial court did not abuse its discretion and, thus, remand is unwarranted.

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Michael F. Gadola

⁵ Judge Geoffrey L. Neithercut sentenced defendant on November 28, 2011 and also considered defendant's request for resentencing.